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October 6, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554


Re: In the Matter of Telecommunications Services Inside Wiring: Customer Premises  
Equipment - In the Matter of Implementation of Cable Television Consumer  
Protection and Competition Act of 1992: Cable Home Wiring

Dear Mr. Caton:

Enclosed for filing please find an original and nine (9) copies of the Reply Comments of RCN Telecom Services, Inc. in the above reference matter. Also included is a 3.5 inch diskette of RCN Telecom Services, Inc. Reply Comments in WordPerfect 5.1 format.

If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Jean L. Kiddoo  
Rachel D. Flam

Its Counsel

Enclosures

cc: Meredith Jones - Cable Services Bureau  
Roy J. Stewart - Mass Media Bureau  
International Transcript Services (ITS)

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20054

In the Matter of	)
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Telecommunications Services	)
Inside Wiring	)
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Customer Premises Equipment	)
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In the Matter of	)
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Implementation of the Cable	)
Television Consumer Protection	)
and Competition Act of 1992:	)
	)
Cable Home Wiring	)

CS Docket No. 95-184

MM Docket No. 92-260

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**REPLY COMMENTS OF  
RCN TELECOM SERVICES, INC.**

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Dated: October 6, 1997

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## SUMMARY

RCN Telecom Services, Inc. ("RCN"), through subsidiaries, is a facilities-based provider of local and long-distance telephone, video and Internet access to the residential markets. As RCN and other competitive providers have shown in their comments -- and as the Commission also recognized in its proposals -- the ability of competitive providers to gain access to multiple dwelling unit buildings ("MDUs") is critical to the initiation of competition in the video services market. Accordingly, and in light of the profound impact that this proceeding will have on the future of such competition, RCN urges the Commission to stand firm in its convictions as embodied in its Further Notice and to adopt its proposed rules with the minor modifications urged by RCN in its Comments.

Contrary to the self-interested assertions of NCTA and other cable interests to the contrary, the Commission clearly has the authority to adopt a rule permitting an alternative service provider to install its wiring within an existing molding or conduit where there is space and the MDU owner does not object. Section 628(b) prohibits cable operators from engaging in "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any [MVPD] from providing satellite cable programming or satellite broadcast programming to subscribers and consumers." Just as Section 628(b) affords the Commission additional authority to adopt its proposed rules for the disposition of home run wiring, so too does it provide a basis for adopting this proposed rule.

RCN urges the Commission to reject Time Warner Cable's ("Time Warner") proposal to afford incumbents veto power in the decision as to whether or not to permit incumbents access to moldings and/or conduits. RCN also urges the Commission to reject an alternative cable proposal to impose unreasonable conditions to alternative providers' access to existing moldings and conduits.

The Commission must also reject any arguments that state mandatory access statutes

afford cable operators rights to maintain unused wiring in moldings and/or conduits where such wiring is blocking a competitive provider's access to tenants' cable home wiring thereby thwarting competition. The arguments advanced simply do not support this proposition. To the extent that an incumbent continues to assert that a state statute conveys such a rights, a Commission rule that it timely obtain a court order affirming its position will resolve the debate as to a particular state statute.

The Commission must not be sidetracked from establishing procedures for the disposition of home run and cable home wiring by the many "clarifications" and "modifications" sought by the cable industry. The Commission's rules are, after all, premised on the assumption that the incumbent provider *no longer has an enforceable right to remain on the premises against the will of the MDU owner*. Accordingly, such arguments -- clearly efforts to discourage the proposed rules' adoption -- are but requests for benefits to which these incumbent are not entitled.

Finally, the cable industry's slamming arguments are overstated. There is simply no basis for believing that the Commission's proposed rules will lead to an epidemic of slamming violations. Moreover, RCN specifically urges the Commission to reject Time Warner's proposals that alternative providers be held responsible for missing convertors and post-termination fees.

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	)	
Cable Home Wiring	)	
	)	

**REPLY COMMENTS OF  
RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. ("RCN"), by its undersigned counsel, hereby submits its Reply Comments to the Further Notice of Proposed Rule Making in the above-captioned proceedings to respond to certain points raised in the initial comments filed by a number of parties on September 25, 1997.<sup>1</sup>

**INTRODUCTION**

RCN, through subsidiaries in Boston, New York, Pennsylvania and, in the near future, Washington, D.C., is a facilities-based provider of video, local and long distance telephone, and

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<sup>1</sup> *In the Matter of Telecommunications Service Inside Wiring: Customer Premises Equipment*, CS Docket No. 95-184; *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, MM Docket No. 92-260, Further Notice of Proposed Rulemaking ("Further Notice" or "FNPRM").

Internet access services to residential and, to a lesser extent, business consumers. As RCN and other competitive providers have shown in their comments in this proceeding, and as the Commission has recognized in formulating its proposed rules herein, the ability of competitive providers to gain access to multiple dwelling unit buildings (“MDUs”) is critical to their ability to compete with incumbent service providers in the video services market. The outcome of this proceeding will therefore have a profound impact on the future of such competition.

Accordingly, RCN urges the Commission to stand firm in its convictions as embodied in its Further Notice and adopt its proposed rules with the minor modifications urged by RCN in its Comments.

The Commission must not allow itself to be misled by the self-serving comments of the cable industry in this proceeding. The cable industry commenters, understandably anxious to deflect the Commission’s attention from their own efforts to assure that competitive services in MDUs cannot reach tenants, and therefore cannot exist, are quick to assert that MDU owners are the culprits whose aim is to prevent such competition. The Commission must not allow itself to be sidetracked by these comments or commenters. While there may be property owners who do not choose to permit competition in their buildings, the focus of many of the rules proposed in this proceeding is upon MDUs where the property owners *do* seek to permit their tenants to receive the benefits of competition, but who, because of very real and important building constraints, are unable to do so because the incumbent cable operators are able to assert that they control the individual tenant wire, and the conduit and molding necessary for competitors to reach subscribers.

The Commission must also avoid being sidetracked by the arguments of the cable industry that it lacks jurisdiction to promulgate its proposed rules. As the Commission has concluded, it *does* have the authority to adopt these rules.

**I. THE COMMISSION CAN AND MUST ADOPT A RULE PERMITTING AN ALTERNATIVE PROVIDER TO INSTALL ITS WIRING WITHIN EXISTING MOLDINGS AND CONDUITS**

**A. The Commission Has the Authority to Adopt this Rule**

Contrary to the self-interested assertions of NCTA and other cable interests to the contrary,<sup>2</sup> the Commission clearly has the authority to adopt a rule permitting an alternative service provider to install its wiring within an existing molding or conduit where there is room in the molding or conduit and the MDU owner does not object.<sup>3</sup> As RCN stated in its initial comments, Congress has given the Commission a clear mandate and the broad authority to promulgate rules aimed at promoting competition.<sup>4</sup>

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<sup>2</sup> See Comments of the National Cable Television Association ("NCTA") at 25-26; Comments of Jones Intercable; Marcus Cable; Century Communications Corp.; Charter Communications, Inc.; Cable Television Association of Georgia; Cable Telecommunications Association of Maryland, Delaware, and the District of Columbia; Florida Cable Telecommunications Association; New Jersey Cable Telecommunications Association; Ohio Cable Telecommunications Association; Oregon Cable Telecommunications Association; South Carolina Cable Television Association; Tennessee Cable Telecommunications Association; Texas cable & Telecommunications Association; Virginia Cable Telecommunications Association at 15-16.

<sup>3</sup> In response to the concerns raised by the Building Owners, RCN submits that the proposed rules already presupposes an MDU owner's consent, and it therefore has no objection to the proposal that an MDU owner's consent should be a prerequisite to access to moldings and conduits. See Joint Comments of Building Owners and Managers International; Institute of Real Estate Management; International Council of Shopping Centers; National Apartment Association; National Multihousing Council and National Realty Committee at 6. Similarly, TCI's concern about the Commission adopting a rule that would be "inconsistent with an existing contract between the MDU owner and the incumbent MVPD," Comments of Telecommunications, Inc. at 11-12, raises a non-issue since a property owner is unlikely to grant permission to use space it has already leased to another provider and, moreover, since RCN's proposal presumes that there is no contract giving the incumbent a property interest in the space within a conduit or molding. Comments of RCN at 9 ("RCN Comments").

<sup>4</sup> See RCN Comments at 5-7. Moreover, as RCN developed in its comments, this rule would not result in a taking. Nonetheless, in the interest of fairness, RCN has suggested that some reasonable amount of compensation be afforded an incumbent for use of the molding or conduit. See RCN at 8-9. See also Comments of Ameritech at 6 (supporting proposal and expressly agreeing that would not result in a taking); Comments of DIRECTV, Inc. at 15-16

In addition to this clear authority to promulgate pro-competitive rules and regulations, Section 628(b) provides the Commission with authority to adopt rules that preclude an incumbent cable operator from taking actions which are aimed at impeding competition. Specifically, Section 628(b) provides that “[i]t shall be unlawful for a cable operator . . . to engage in unfair methods of competition or unfair or deceptive acts and practices, the purposes or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers and consumers.”<sup>5</sup> As the Commission has acknowledged, Section 628(b) “is a clear repository of Commission jurisdiction to adopt additional rules or to take additional action to accomplish statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to the broader distribution of satellite cable and broadcast programming.”<sup>6</sup> The Commission can and must utilize its broad authority in this area to adopt its proposed rules.

In addition to those bases for authority cited by the Commission in its Further Notice, Section 628(b) certainly affords the Commission authority to adopt its proposed rules regarding the disposition of home run wiring. As the Commission has recognized, incumbent cable operators frequently threaten litigation over home runs as a tactic to discourage the introduction of MVPD competition at MDUs.<sup>7</sup> The net result when this occurs is that MDU residents do not

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(same); Comments of OpTel, Inc. at 7-8; Comments of GTE at 16; Comments of SBC Communications, Inc. at 6-7.

<sup>5</sup> 47 U.S.C. § 548(b).

<sup>6</sup> *In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992: Development of Competition and Diversity in Video Programming Distribution and Carriage*, First Report and Order, MM Docket No. 92-265 (Rel. Apr. 30, 1993) at ¶ 41.

<sup>7</sup> As the Commission noted; [D]isagreement over ownership and control of the home run wire substantially tempers competition. The record indicates that, where the property owner or

receive the new provider's multichannel video programming service. Where the incumbent lacks a sustainable legal basis for its claim of ownership over home runs, the threats to litigate clearly constitute an unfair practice and unfair method of competition.

The Commission has the authority to construe "unfair methods of competition" and/or "unfair acts or practices" to include improper litigation threats and posturing over the disposition of home runs that effectively and improperly chill competition.<sup>8</sup> The Commission must do so. The proposed rules, modified to require the incumbent to timely obtain a court order of its rights, will eliminate incumbents' ability to rely upon the tactic of threatening, but not pursuing, litigation to create an atmosphere of uncertainty and fear. The incumbent will, instead, be required to actually pursue its legal remedies to show that it really does have the right to leave its unused home runs in place.<sup>9</sup> In the absence of pursuing those legal remedies, the incumbent is simply required to acknowledge the obvious -- that it has no right to keep its unused home runs in place. Once the incumbent's legal rights are established, then either the procedure applies (if the incumbent does not have the right to remain) or the procedure does not apply (if the

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subscriber seeks another video service provider, instead of responding to competition through varied and improved service offerings, the incumbent provider often invokes its alleged ownership interest in the home run wiring. . . . Written agreements are frequently unclear, often having been consummated in an era of an accepted monopoly, and state and local law as to their meaning is vague. Invoking any of these reasons, incumbents often refuse to sell the home run wiring to a new provider or cooperate in any transition. The property owner or subscriber is frequently left with an unclear understanding of why another provider cannot commence service. The litigation alternative, an option rarely conducive to generating competition, while typically not pursued by the property owner or subscriber, can be employed aggressively by the incumbent. The result is to chill the competitive environment. FNPRM at ¶ 31.

<sup>8</sup> *Chevron v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)

<sup>9</sup> A number of commenters urge the Commission to toll its rules in the event that a lawsuit is initiated to determine ownership of the home runs. However, as RCN stated in its initial comments, the Commission's proposed procedures and time lines should apply unless the incumbent has timely obtained a court order confirming its claimed rights. RCN Comments at 11-12. To permit otherwise will enable the initiation of lawsuits without active prosecution to become yet another tactic in incumbents' arsenals.

incumbent has the right to remain). This certainty will, as the Commission recognized, go a long way towards encouraging MVPD owners to allow multiple MVPDs on the premises.

Similarly an incumbent's refusal to allow an alternative provider access to moldings or conduits where space exists and the MDU owner does not object is also anti-competitive and absolutely stands in the way of the broader distribution of satellite cable and broadcast video programming. Such behavior can and must be treated by the Commission as an "unfair method of competition" and/or "unfair act or practice." As the record in this proceeding reflects and, indeed, as the Commission has already recognized, MDU owners are frequently reluctant to permit duplicative molding and conduit installations for legitimate reasons including aesthetics and space constraints. Under such circumstances, an incumbent's anti-competitive efforts to deny an alternative provider access to existing moldings or conduits will almost always result in the alternative provider being denied access to the building altogether and tenants' being denied access to the programming offered by that provider. Such a result clearly hinders competitive MVPDs' ability to provide satellite cable programming or satellite broadcast programming to consumers, violating the statute's express purpose to "promote the public interest, convenience, and necessity by increasing competition and diversity in the [MVPD market]."<sup>10</sup>

**B. The Commission Must Reject the Cable Industry's Anti-Competitive Proposals**

1. *The Commission must reject Time Warner's proposal to permit incumbents the power to veto competition.*

Time Warner proposes to permit the incumbent MVPD to take part in the initial decision as whether or not an alternative MVPD will be afforded access to moldings or conduits.<sup>11</sup> Under Time Warner's proposal, if the incumbent vetoes the access request, the only way that the alternative provider could gain access to the building at all would be for the MDU owner to agree

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<sup>10</sup> 47 U.S.C. § 548(i).

<sup>11</sup> See Comments of Time Warner Cable at 48 ("Time Warner Comments").

to allow the installation of larger moldings or conduits. Incredibly, Time Warner actually attempts to argue that a proposal which would essentially give incumbent MVPDs veto power over an alternative provider's efforts to gain access to moldings or conduits is pro-competitive.

The Commission *must* reject this proposal as it would defeat the very purpose for proposing the rule in the first place. Time Warner's proposal is obviously flawed and unworkable for two reasons. First, it assumes that incumbents will be willing to grant access to moldings and conduits -- if this were the case, the need for Commission rules on this subject would never have arisen. On the contrary, as RCN and other competitive providers have repeatedly shown, incumbents are probably the single greatest barrier to competition in the MDU market.<sup>12</sup> That is not likely to change unless the Commission takes affirmative action to permit alternative providers access to moldings and conduits, where space within them exists, *even over the objections of the incumbent MVPD*.

Second, the proposal assumes that, if the incumbent vetoes the use of existing molding or conduit, the competitive provider will always have the option to avail itself of new molding or conduit to enable it to reach tenants. As the Commission well knows, this assumption is wrong. Often, there is no space for new or larger molding or conduit. Moreover, MDU owners who object to duplicative wiring and installations for valid reasons including aesthetics, space limitations, the avoidance of disruption and inconvenience, and the potential for property damage, are not likely to agree readily to the installation of larger moldings. Time Warner's proposal will, therefore, almost always serve as a roadblock to competition.

2. *The Commission Must Reject Proposals to Impose Unreasonable Conditions to Access*

The Commission must also reject Cablevision Communication's proposal to require that, as a condition of access, alternative MVPDs must pay the incumbent compensation in an amount

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<sup>12</sup> See e.g., Reply Comments of RCN in *In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming* at 3.

equaling the cost that the alternative provider would have incurred had it installed its own molding and/or conduit, including costs for labor.<sup>13</sup>

The proposed compensation requirement is unreasonable. RCN has taken the position that, in recognition and consideration of the initial investment made by the incumbent, the Commission should consider requiring that reasonable compensation be afforded the incumbent for access to the empty space within a conduit or molding installed by the incumbent.<sup>14</sup> Cablevision Communication's proposal, however, would require an alternative MVPD to pay well beyond what is necessary to compensate the incumbent. In contrast to RCN's proposal to base compensation on the book value of an incumbent's equipment and the amount of space that the alternative provider's wires will actually use,<sup>15</sup> Cablevision Communication's proposal would "compensate" the incumbent in the amount of the value of new equipment installed today. Cablevision Communications does not explain why such a windfall to the incumbent is justified. RCN submits that there simply is no justification.

## **II. THE COMMISSION MUST REJECT ARGUMENTS THAT MANDATORY ACCESS STATUTES AFFORD AN MVPD A RIGHT TO MAINTAIN UNUSED WIRING IN MOLDINGS AND CONDUITS**

The Commission must reject the cable industry's unsupported claims that mandatory access statutes automatically afford them a right to maintain their wiring in MDUs where they

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<sup>13</sup> See Comments of Cablevision Communications, Inc., Classic Cable, Inc., and Comcast Cable Communications, Inc. at 27.

<sup>14</sup> RCN Comments at 9.

<sup>15</sup> RCN proposes that compensation be determined, in the first instance, by negotiation. If the parties are unable to reach an agreement, however, RCN proposes that a "Depreciated Installation Cost" formula be utilized to determine each party's fair share of the space. Under this proposed formula, the cost for each wire would be determined by calculating the incumbent's documented installation costs for molding or conduit less depreciation. The new provider's share of the costs would be the depreciated per wire cost times the number of wires it has installed in the conduit or molding. See RCN Comments at 7.

are not providing service to a subscriber.<sup>16</sup> The Commission must also reject any argument that where unused wiring block competitors' access to moldings and/or conduits (and, therefore, denies tenants a choice of providers), such statutes provide the right to leave unused wiring in moldings and/or conduits.

Time Warner and Adelphia's claim that mandatory access statutes *expressly* premised upon tenants' requests for service "mean[ ] only that at least one tenant of a MDU must initially request service in order for a cable operator to be permitted to install wiring *throughout the building*" certainly provides no support for these assertions.<sup>17</sup> The statutes simply create a threshold requirement for a cable operator to enter an MDU. With one exception, none of the mandatory access statutes premised upon tenants' request for service speaks of rights of cable operators to install -- let alone to maintain -- wiring throughout an *entire* building.<sup>180</sup> In cases where franchises are obtained from the county, however, there is no such provision for building-wide installation. *See* 55 I.L.C.S. § 5/5-1096.<sup>19</sup> Even Pennsylvania's mandatory access statute -- relied upon heavily by Time Warner and Adelphia -- fails to support their assertion, since it is expressly aimed at *enabling* tenant choice, not *preventing* it. Indeed, precluding a landlord from "prohibit[ing] or otherwise prevent[ing] a tenant from . . . acquiring CATV service from an operator of the tenant's choice," the statute does not provide a basis for an incumbent to leave in place unnecessary wiring which blocks access to moldings and/or conduits and which therefore prevents tenants from reaching "an operator of the tenant's choice." To the extent that an incumbent continues to assert that a state statute conveys such a right, a Commission rule that it timely obtain a court order affirming its position will resolve the debate as to a particular state statute.<sup>20</sup>

Any cable industry claims that mandatory access laws which are not triggered by tenant requests for service might also give them the right to block access by competitors are similarly unsupported. Indeed, even the case cited by Time Warner allegedly for the proposition that "[i]n New York, franchised cable operators have the right to maintain their cable wiring throughout

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<sup>16</sup> *See e.g.*, Time Warner Comments at 28-33; Adelphia Cable Communications et al. at 10-14 ("Adelphia Comments"); Cable Telecommunications Association at 9 ("CATA Comments").

<sup>17</sup> Time Warner Comments at 31-32 (emphasis added); Adelphia Comments at 12.

<sup>18</sup> The one exception -- an Illinois statute governing franchises granted by a municipality -- requires a request by more than three tenants and does not, in any event, address the question of a cable operator's right to maintain unused wiring in an MDU where such wiring precludes competition to a tenant. *See* 65 I.L.C.S. § 5/11-42-11.1.

<sup>20</sup> *See* RCN Comments at 12-13.

their building, and do not have to remove portions of it simply because there is no current request for franchised cable service, or because a competing MVPD is serving the building”<sup>21</sup> does not reach the issue.<sup>22</sup> The case simply does not address the situation where wiring, which is not necessary to service any tenant, is actually *preventing* competitive access to the building. As RCN stated in its comments, statutes aimed at promoting residents access to efficient, economical service should not be construed so anti-competitively.<sup>23</sup>

### **III. THE COMMISSION MUST NOT BE SIDETRACKED FROM ESTABLISHING PROCEDURES FOR THE DISPOSITION OF HOME RUN AND CABLE HOME WIRING BY SPECIAL INTEREST REQUESTS**

The Commission must not be deterred from adopting its proposed rules by pleas from the cable industry for benefits to which they simply are not entitled. From the tone of many of the cable industry’s comments, it might appear that the Commission proposes to deprive them of a right to serve tenants. Clearly, this not the case. Indeed, the Commission’s rules are *expressly* premised on the assumption that *the incumbent provider no longer has an enforceable right to remain on the premises against the will of the MDU owner*.<sup>24</sup> The Commission’s rules, therefore, simply provide mechanisms to minimize disruption and service interruptions to tenants which, absent such rules, would serve to discourage tenant from making a competitive choice.<sup>25</sup>

Moreover, it is clear that requests for “clarifications” and “modifications” -- including

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<sup>21</sup> Time Warner Comments at 31.

<sup>22</sup> *See 86th Street Tenants Corp. v. New York State Commission on Cable Television*, 216 A.D. 2d 96 (1st Dep’t 1995).

<sup>23</sup> RCN Comments at 11.

<sup>24</sup> FNPRM at ¶ 34.

<sup>25</sup> Under common law, the incumbent has an obligation to leave the premises once its right of access has expired. If the incumbent’s facilities are fixtures under state law, then the MDU owner owns them and they remain in place. If the incumbents facilities are personal property then the MDU owner has the absolute right to force the incumbent to remove them and restore the premises to its original condition. Whether and to what extent the MDU owner will accept an abandonment of personal property on its premises is entirely within the owner’s discretion, not the incumbent’s. The proposed rules do alter these basic legal concepts. Nor do the proposed rules alter an incumbent’s right to serve subscribers who want its service under mandatory access laws. *See* Section II, *supra*.

requests that the Commission set a default price for the sale of home run wiring,<sup>26</sup> that the Commission require MDU owners to pay the cost of removing an incumbents' facilities, and that the rules only apply in the unit-by-unit context -- are also efforts to place burdens and requirements on the Commission's transition mechanism which will discourage and impede the goal of providing for a workably competitive market, and thereby accomplish indirectly what the Commission has proposed to remedy -- the thwarting of competition in the MDU market.

#### **IV. THE CABLE INDUSTRY'S SLAMMING CLAIMS ARE OVERSTATED**

Despite the assertions of the cable industry to the contrary, there is simply no basis for believing that the adoption of the Commission's proposal to permit the alternative service provider or the MDU owner to act as the subscriber's agent in providing notice of a subscriber's desire to change services will lead to an epidemic of "slamming" violations.<sup>27</sup> To begin with, the proposed rule would allow either the alternative provider *or the MDU owner* to act as agent.<sup>28</sup> There is no reason to believe that an MDU owner would initiate or participate in slamming activities. Second, unlike telephone service, video service is not transparent to the consumer. Subscribers know immediately if their service provider has been changed, and can act to rectify the situation at once.

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<sup>26</sup> Contrary to the cable industry's claims that default prices are necessary because MDU owners and/or incumbents will never have an incentive to reach an agreement as to a fair price with the incumbent, RCN notes that Time Warner and the owner of an MDU in New York recently concluded, after many years of litigation, an arm's length negotiation for the purchase and sale of home runs. *See Paragon Cable Manhattan v. P & S 95th Street Associates and Milstein Properties Corp.*, Supreme Court of the State of New York, Index No. 130734/93.

<sup>27</sup> Time Warner's allegations of "slamming" by RCN are grossly distorted and categorically denied by RCN. *See Time Warner Comments* at 45-47. In a multi-wire environment, honest mistakes and misunderstandings will occur among and between affected parties. The proposed rules go a long way toward helping competitors, MDU owners and subscribers understand what the procedures should be for a switch over so that when outages or mix-ups occur (as they occasionally do), the responsible party can be identified and the corrective action taken.

<sup>28</sup> FNPRM at ¶ 39.

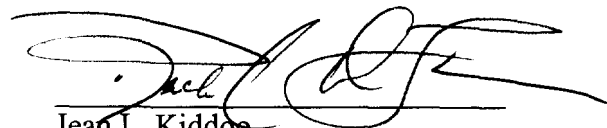
RCN also strongly disagrees with Time Warner's proposal to make a subscriber's agent responsible for missing converters. Time Warner, like virtually all other cable operators, takes a security deposit for converters placed in MDUs. The loss of the subscriber's security deposit is a potent incentive for the new provider to ensure the incumbent's converter box is returned. In the event it is not, the security deposit is more than ample protection for Time Warner's investment in the converter.

Time Warner's proposal to make the agent liable for fees it charges after its service has been terminated is also without merit. In New York City, like many communities, there is a process available under the franchise to resolve billing disputes. Those procedures have been used effectively in New York City to resolve the very problem that Time Warner complains about.

### CONCLUSION

RCN applauds the Commission for its efforts to promote competition in MDUs, an increasingly important segment of the residential markets. RCN urges the Commission to stand firm in its convictions as embodied in its Further Notice and to adopt its proposed rules with the minor modifications urged by RCN in its Comments.

Respectfully Submitted,



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Dated: October 6, 1997

**CERTIFICATE OF SERVICE**  
**CS DOCKET No. 95-184 and MM Docket No. 92-260**

I certify that a copy of the Reply Comments for RCN Telecom Services, Inc. were served via first class mail on October 6, 1997 to the following parties of record:

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